

SERVICE DATE – JUNE 23, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36124

DOVER AND ROCKAWAY RIVER RAILROAD, LLC—OPERATION EXEMPTION—
COUNTY OF MORRIS, N.J.

Docket No. FD 36125

KEAN BURENGA—CONTINUANCE IN CONTROL EXEMPTION—DOVER AND
ROCKAWAY RIVER RAILROAD, LLC, BELVIDERE & DELAWARE RIVER RAILWAY
COMPANY, INC., AND BLACK RIVER & WESTERN CORP.

Digest:¹ In this decision, the Board grants a request to advance by one day (to
July 1, 2017) the effective date of the exemptions in these cases.

Decided: June 20, 2017

On June 2, 2017, Dover and Rockaway River Railroad, LLC (DRRR), a noncarrier, filed in Docket No. FD 36124 a verified notice of exemption under 49 C.F.R. § 1150.31 to operate, pursuant to an agreement, a total of approximately 17.4 miles of rail line owned by several railroads that in turn are owned by the County of Morris, N.J. (the County).² Concurrently, Kean Burenga, an individual and a noncarrier, filed in Docket No. FD 36125 a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of DRRR upon DRRR's becoming a Class III rail carrier. Notices of the exemptions were served and published in the Federal Register on June 16, 2017 (82 Fed. Reg. 27,755 & 27,756), indicating that the exemptions would become effective on July 2, 2017. See 49 C.F.R. §§ 1150.32(b) & 1180.4(g) (these types of exemptions become effective 30 days after the verified notices are filed).

On June 5, 2017, DRRR and Burenga jointly petitioned the Board to shorten the applicable effective dates from the standard 30 days to 29 days to allow the exemptions to

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The lines at issue are as follows: (1) Chester Branch, between milepost 41.4 at Chester Junction, in Roxbury Township, N.J., and milepost 45.4 in Randolph, N.J.; (2) High Bridge Branch, between milepost 22.66 at Ferremonte Junction, in Roxbury Township and milepost 15.2 in Flanders, N.J.; and (3) Dover & Rockaway Branch, between milepost 25.7 at D&R Junction in Wharton, N.J., and milepost 31.6 in Rockaway, N.J.

become effective on July 1, 2017. They note that DRRR committed to the County that it would be authorized to commence service by July 1, 2017, following expiration of the current operator's operating agreement on June 30. The evidence demonstrates that the verified notices were tendered to an overnight delivery service on May 31 for delivery to the Board on June 1, but the Board did not receive them until June 2. As a result of the delayed delivery, the effective date of the exemptions under the Board's regulations is July 2 rather than July 1.

The Board will grant DRRR's and Burenga's petition to make the exemptions effective on July 1, 2017. The record shows that the verified notices were tendered in good faith on May 31 for delivery the next day but that actual delivery to the Board was delayed a day for reasons beyond the control of DRRR and Burenga. Allowing the exemptions to take effect sooner than the normal 30 days will enable DRRR to meet its commitment to the County and will help ensure there is no break in service to shippers. Furthermore, the effective date will only be advanced one day, and there is no evidence that any party would be harmed.

It is ordered:

1. DRRR's and Burenga's petition is granted.
2. DRRR's operating exemption and Burenga's continuance in control exemption will both be effective on July 1, 2017.
3. This decision is effective on its service date.

By the Board, Board Members Begeman, Elliott, and Miller.